

Robb C. Adkins (SBN 194576)  
radkins@winston.com  
Krista M. Enns (SBN 206430)  
kenns@winston.com  
Seth Weisburst (SBN 259323)  
sweisburst@winston.com  
WINSTON & STRAWN LLP  
101 California Street, 35th Floor  
San Francisco, CA 94111-5840  
Telephone: (415) 591-1000  
Facsimile: (415) 591-1400

Lawrence M. Hill (*pro hac vice*)  
lhill@winston.com  
Alexa Perlman (*pro hac vice*)  
aperlman@winston.com  
WINSTON & STRAWN LLP  
200 Park Avenue  
New York, NY 10166-4193  
Telephone: (212) 294-6700  
Facsimile: (212) 294-4700

Steffen N. Johnson (*pro hac vice*)  
sjohnson@winston.com  
Lowell D. Jacobson (*pro hac vice*)  
ljacobson@winston.com  
Adrianne Rosenbluth (*pro hac vice*)  
arosenbluth@winston.com  
WINSTON & STRAWN LLP  
1700 K Street, N.W.  
Washington, D.C. 20006-3817  
Telephone: (202) 282-5000  
Facsimile: (202) 282-5100

Brooke Goldstein (*pro hac vice*)  
brooke@thelawfareproject.org  
Amanda Berman (*pro hac vice*)  
amanda@thelawfareproject.org  
THE LAWFARE PROJECT  
633 Third Avenue, 21st Floor  
New York, NY 10017  
Telephone: (212) 339-6995

Attorneys for Plaintiffs  
JACOB MANDEL, CHARLES VOLK,  
LIAM KERN, SHACHAR BEN-DAVID,  
MICHAELA GERSHON, MASHA MERKULOVA,  
and STEPHANIE ROSEKIND

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

JACOB MANDEL, et al.,  
Plaintiffs,

v.

BOARD OF TRUSTEES of the CALIFORNIA  
STATE UNIVERSITY, et al.,  
Defendants.

**Case No. 3:17-CV-03511-WHO**

**PLAINTIFFS' OPPOSITION TO OPEN  
HILLEL'S ADMINISTRATIVE  
MOTION FOR LEAVE TO FILE  
AMICUS CURIAE BRIEF [ECF NO. 141]**

As the party seeking leave to file an amicus curiae brief, Open Hillel has the burden of showing that its “participation is useful to or otherwise desirable to the court.” *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M 02-1486 PJH, 2007 WL 2022026, at \*1 (N.D. Cal. Jul. 9, 2007). Open Hillel cannot meet its burden. The entire purpose of its proposed amicus brief is to challenge the truth of a single allegation of Plaintiffs’ Second Amended Complaint (“SAC”) regarding Hillel’s acceptance and representation of all Jews on campus at San Francisco State University (“SFSU”). But, on a motion to dismiss, allegations must be accepted as true. *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008). As such, Open Hillel’s proposed amicus brief is completely irrelevant to the motions currently pending before the Court. Absent any relevance to these motions, Open Hillel cannot show that its participation is useful or desirable. Therefore, for this and the other reasons discussed herein, Open Hillel’s Motion should be denied.

## **I. BACKGROUND**

Prospective amicus Open Hillel filed the instant motion on May 25, 2018. Motion for Leave to File Amicus Curiae Brief (ECF No. 141) (the “Motion”). It is represented by the “local” counsel of the other putative amicus participants, the “Jewish Studies Scholars.” Application for Admission of Attorney *Pro Hac Vice* (ECF No. 95) (identifying Mr. Siegel as “local co-counsel in this case” for the “Jewish Studies Scholars”). Since the Motion does not comply with Local Rule 7-2(a)’s notice requirements, Plaintiffs assume that it is a motion for administrative relief under Local Rule 7-11.

According to the Motion, the primary reason Open Hillel seeks leave to file its proposed amicus brief is that it is “uniquely positioned to inform the Court why Hillel does not represent all Jewish students.” Motion at 5:8-9. As the proposed brief explains, Open Hillel seeks to participate in this proceeding because it believes that “plaintiffs’ statement that ‘Hillel is the only Jewish organization that represents all Jews on campus as Jews, regardless of political ideology, gender, and national origin, or any other characteristic’ is false.” Proposed Brief of Amicus Curiae (ECF 141-1) (the “Proposed Brief”) at 6:12-14 (quoting and removing emphasis from SAC ¶ 34).

## **II. THE MOTION SHOULD BE DENIED BECAUSE IT DOES NOT SHOW THAT FILING THE PROPOSED BRIEF WOULD BE USEFUL OR DESIRABLE**

As noted above, where a party seeks leave to file an amicus brief, it bears the burden of

1 showing that its “participation is useful to or otherwise desirable to the court.” *In re DRAM Antitrust*  
 2 *Litig.*, *supra*, 2007 WL 2022026, at \*1. For a number of reasons, Open Hillel fails to meet its  
 3 burden.<sup>1</sup>

4 **First**, as mentioned above, the entire purpose of Open Hillel’s Proposed Brief is to challenge  
 5 the truth of one allegation in the operative complaint, namely that “Hillel is the only Jewish  
 6 organization that represents all Jews on campus *as Jews*, regardless of political ideology, gender,  
 7 national origin, or any other characteristic.” SAC ¶ 34. This purpose is improper at the pleading  
 8 stage, because all allegations—including this one—must be accepted as true for purposes of a  
 9 motion to dismiss. *Lazy Y Ranch Ltd.*, *supra*, 546 F.3d at 588. Because the Proposed Brief’s  
 10 essential purpose makes it not useful to the Court, the Motion should be denied.

11 But even if this were not the case, the sum and substance of Open Hillel’s argument is that,  
 12 because of certain statements by Hillel International, any Hillel campus affiliate should be  
 13 considered a political organization, not a Jewish organization. Of course, the positions Hillel  
 14 International takes—political or otherwise—do not make either Hillel International or any Hillel  
 15 campus affiliate any more or less a Jewish organization. Indeed, Open Hillel never disputes that  
 16 Hillel is a Jewish organization. Rather, it complains that Hillel is an exclusionary Jewish  
 17 organization and to that end, it “aims to eliminate Hillel International’s Standards of Partnership for  
 18 Israeli Activities.” Proposed Brief at 7:2-3.

19 But the authority on which Open Hillel relies does not support its conclusion. That is, it

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20 <sup>1</sup> The Motion should also be denied on procedural grounds for failing to meet either requirement of  
 21 Local Rule 7-11(a), which mandates that the Motion be accompanied “by a proposed order and by  
 22 either a stipulation under Civil L.R. 7-12 or by a declaration that explains why a stipulation could  
 23 not be obtained.” No proposed order, declaration, or stipulation was filed. Open Hillel did not even  
 24 wait to hear back from the CSU Defendants’ counsel before proceeding. Motion at 4:3-4. Where an  
 25 administrative motion fails to comply with Local Rule 7-11(a), it may be denied without reaching  
 26 the merits. *See, e.g., Tri-Valley CAREs v. U.S. Dep’t. of Energy*, 671 F.3d 1113, 1131 (9th Cir.  
 27 2012). The Court would be well within its discretion to deny the motion for this reason alone. *See*  
 28 *id.* (“Denial of a motion as the result of a failure to comply with local rules is well within a district  
 court’s discretion.”). Open Hillel failed to meet these procedural requirements even though its own  
*co-counsel* filed a similar motion less than two weeks ago, and Plaintiffs’ opposition to that motion  
 clearly identified the Rule 7-11 requirements. Jewish Studies Scholars’ Motion to File a Proposed  
 Amicus Curiae Brief (ECF No. 138); Plaintiffs’ Opposition to “Jewish Studies Scholars” Motion for  
 Leave to File Amicus Curiae Brief (ECF No. 140) at 1 n.1 (setting forth the Rule 7-11  
 requirements); Application for Admission of Attorney *Pro Hac Vice* (ECF No. 95) (“Jewish Studies  
 Scholars” counsel’s identification of Mr. Siegel, Open Hillel’s counsel, as his “local co-counsel in  
 this case”).

claims that Hillel International's Standards of Partnership (the "Standards") "exclude Jewish students who dissent from a singular ideological view in support of Israeli policy." Motion at 4:10-11. Even a cursory review of the Standards illustrates that this is not the case. The Standards set forth that "Hillel will not *partner with, house, or host organizations, groups or speakers*" that do not support Israel's right to exist as a Jewish and democratic state, that support boycotts of, divestment from, or sanctions against Israel, or that delegitimize, demonize, or apply a double standard to Israel. *See* Proposed Brief at 7:12-20 (emphasis added). The Standards say nothing about excluding any *students* from membership or participation in events based on an ideological litmus test or based on a student's political viewpoints. Further, Open Hillel resorts to a discussion of campuses other than SFSU to support the point it is trying to make. But those campuses are not at issue here. The case is focused on SFSU. And, to the extent that the assertion that Hillel at SFSU is exclusionary is an issue in this case—an assertion Plaintiffs unequivocally dispute—that assertion has no bearing on the motions currently pending before the Court.

The motions to dismiss before the Court ask only whether there is a "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). The Court's inquiries are bound by the allegations as stated in the SAC, which are accepted as true and construed in the light most favorable to the Plaintiffs. *Lazy Y Ranch, supra*, 546 F.3d at 588. Accordingly, factual disputes—whether brought by a defendant or a proposed amicus—are not to be resolved at the motion to dismiss phase. *See Cement & Concrete Workers Dist. Council Pension Fund v. Hewlett Packard Co.*, 964 F. Supp. 2d 1128, 1145 (N.D. Cal. 2013) (questions of fact will not be resolved by the court on a motion to dismiss); *Great Am. Ins. Co. v. Chang*, No. 12-00833-SC, 2012 WL 3660005, at \*2 (N.D. Cal. Aug. 24, 2012) (factual disputes not resolvable on motion to dismiss). Open Hillel's Motion therefore is, at best, premature.

**Second**, the Proposed Brief does nothing more than present a series of alleged actions and statements of other, non-SFSU Hillel chapters and Hillel International leaders, generating a factual dispute that is wholly irrelevant to issues at bar. This narrative about the ostensible activities of other, non-SFSU Hillel chapters has no bearing whatsoever on the claims presented in this case. As such it is irrelevant, and amicus curiae briefs that are irrelevant to the issues in litigation are not

proper. *See U.S. v. Bd. of Cty. Comm'rs of the Cty. Of Otero*, 184 F. Supp. 3d 1097, 1118 (D.N.M. 2015) (denying a motion for leave to file an amicus brief that “contains no argument relevant to the disposition of this case”); *Korrow v. Aaron's Inc.*, Civ. Act. No. 10-6317 (MAS) (LHG), 2015 WL 7720491, at \*11-12 (D.N.J. Nov. 30, 2015) (amici who provided an argument that was “not relevant” had “failed to show that its appearance would be useful to the Court”); *Cty. Of Boyd v. US Ecology, Inc.*, 858 F. Supp. 960, 970 (D. Neb. 1994) (denying a motion to appear as amicus curiae because the evidence offered “was not relevant to the question then before [the judge]”).

**Third**, there is no reason to believe that the Proposed Brief's author, Open Hillel, can offer “unique expertise and perspective” relevant to the Court. Motion at 5:1. Open Hillel has no presence on SFSU's campus and the Proposed Brief merely presents innuendos and unsupported inference. During the course of this case, any factual dispute can be capably raised by one or more of the *four separate law firms* representing Defendants<sup>2</sup> here. As the Motion recognizes, district courts welcome amicus briefs if the party “has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *NGV Gaming, Ltd. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (quoting *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003)). Here, while the Motion states that Open Hillel “represent[s] students from campuses across the country, including San Francisco State University,” Motion at 4:7-8, Open Hillel is not listed as a recognized Student Organization on SFSU's Student Involvement and Career Center Student Organization Directory.<sup>3</sup> Nor does Open Hillel's Academic Council include a representative from SFSU.<sup>4</sup> Furthermore, Open Hillel's “unique information or perspective” is simply a repackaging of the same arguments already presented by Defendants' competent counsel, and therefore does not add anything “beyond the help that the lawyers for the parties are able to provide.” *See Goldberg v. Philadelphia*, No. Civ. A 91-7575, 1994 WL 369875,

<sup>2</sup> The term “Defendants” refers collectively to the defendants in this case: Board of Trustees of the California State University, San Francisco State University, Rabab Abdulhadi in her individual capacity, and Leslie Wong, Mary Ann Begley, Luoluo Hong, Lawrence Birello, Reginald Parson, Osvaldo Del Valle, Kenneth Monteiro, Brian Stuart, and Mark Jaramilla in their official and individual capacities.

<sup>3</sup> San Francisco State University, *Student Organization Directory*, available at <http://www.sfsu.edu/~sicc/organizationdirectory.html>.

<sup>4</sup> Open Hillel, *Academic Council*, available at <http://www.openhillel.org/academic-council/>.

at \*1 (E.D. Pa. July 14, 1994) (“If the court feels that the parties are adequately represented so that amicus participation is neither necessary nor helpful, it should deny amicus curiae participation.”). For each of these reasons, the Motion fails to show that the Proposed Brief would be useful or desirable to the Court.

### III. CONCLUSION

For the reasons discussed above, Plaintiffs respectfully request that the Court deny the Motion.

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WINSTON & STRAWN LLP

By: /s/ Seth Weisburst

Robb C. Adkins  
Lawrence M. Hill (*pro hac vice*)  
Krista M. Enns  
Steffen N. Johnson (*pro hac vice*)  
Lowell Jacobson (*pro hac vice*)  
Seth Weisburst  
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WINSTON & STRAWN LLP

Brooke Goldstein (*pro hac vice*)  
Amanda Berman (*pro hac vice*)  
THE LAWFARE PROJECT

Attorneys for Plaintiffs  
JACOB MANDEL, CHARLES VOLK, LIAM  
KERN, MICHAELA GERSHON, SHACHAR  
BEN-DAVID, MASHA MERKULOVA, and  
STEPHANIE ROSEKIND